IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION

Not Restricted

S ECR 2024 0271

IN THE MATTER of the *Bail Act 1977* (Vic)

AND

IN THE MATTER of an application for bail by KL

JUDGE:	Elliott J
WHERE HELD:	Melbourne
DATE OF HEARING:	22 November 2024
DATE OF RULING:	22 November 2024
CASE MAY BE CITED AS:	Re KL
MEDIUM NEUTRAL CITATION:	[2024] VSC 734

CRIMINAL LAW – Bail – 13 year old child – Presumption of *doli incapax* – Charges of motor vehicle theft, aggravated burglary, theft, threats to kill, false imprisonment and assault with a weapon – Requirement to show exceptional circumstances – Exceptional circumstances established – Unacceptable risk not pressed – Bail granted for 1 week – *Bail Act 1977* (Vic), ss 1B, 3AAA, 3B, 4AA, 4A, 4D, 4E, 5AAA, 12.

APPEARANCES:	Counsel	Solicitors
For the applicant	D De Witt	Victoria Legal Aid
For the respondent	P Murphy (solicitor)	Victoria Police

HIS HONOUR:

A. Introduction

1 On 14 November 2024, a notice of intention to make an application for bail was filed on behalf of a 13 year old child ("KL").[1]

2 One day prior, KL was remanded in custody after an application to revoke bail was granted by the Children's Court of Victoria. KL has been charged with a raft of serious offences including motor vehicle theft, aggravated burglary, burglary, theft, threats to kill, false imprisonment and assault with a weapon.

3 This is KL's second time in custody, having spent 6 days on remand in September 2024.[2] KL has served an additional 9 days in custody since his grant of bail was revoked on 13 November 2024.

4 The matter is next listed in the Children's Court on 28 November 2024 for mention.

5 On this application, KL relied upon, among other surrounding circumstances, his special status as a child, the presumption of *doli incapax*,[3] the likelihood that the time he spends on remand will exceed the ultimate sentence imposed if he is not acquitted, the availability of stable accommodation and the availability of support from Youth Justice, to establish the existence of exceptional circumstances. The prosecution conceded that it was open for the court to find that exceptional circumstances exist that justify the grant of bail. The application was initially opposed by the prosecution on the basis that KL would present an unacceptable risk of endangering the safety or welfare of any other person or interfering with a witness or otherwise obstructing the course of justice, if he were to be released on bail. However, the prosecution did not press its initial position after agreement was reached between the parties regarding the proposed conditions of bail.

[1]A pseudonym has been used to protect the identity of the applicant and to ensure compliance with s 534(1)(a)(ii) of the *Children, Youth and Families Act 2005* (Vic).
[2]See pars 40-41 below.
[3]Meaning incapable of crime; the presumption at common law is that a child who is 10 years of age or over but under 14 years of age cannot commit an offence: *Bail Act 1977* (Vic), s 3B(1)(c). See also *R v ALH* (2003) 6 VR 276, 281 [20] (Callaway JA, with whom Batt JA relevantly agreed).

6 For the reasons to follow, the application for bail is granted for a strictly limited period.

B. Background

B.1 Alleged offending

7 KL is currently on remand in respect to 5 matters, however, the court has been informed that 1 of those matters, and another matter for which KL is subject to a summons, will be withdrawn on the basis of the presumption of *doli incapax*.

8 The following account of the remaining charges is based on the prosecution case and only comprises allegations at this stage.

B.1.1 Charges dated 3 August 2024

9 On 3 August 2024, KL was charged with:

(1) Aggravated burglary, contrary to section 77(1) of the *Crimes Act 1958* (Vic).

(2) Theft of a motor vehicle, contrary to section 74(1) of the *Crimes Act*.

(3) Two charges of attempted aggravated burglary, contrary to section 321M of the *Crimes Act*.

(4) Theft, contrary to section 74(1) of the *Crimes Act*.

10 It is alleged that at approximately 12.52am on 24 July 2024, KL, his co-accused and an unknown male offender attended a residential property in Bentleigh and attempted to steal a vehicle parked in the driveway. Upon realising that the vehicle was locked, KL's co-accused and the unknown male offender unsuccessfully attempted to gain entry to the residence before leaving the premises.

11 A few hours later at approximately 3.18am, KL, his co-accused and the unknown male offender allegedly attended a residential address in Carnegie in a white Toyota Corolla. The trio exited the vehicle and entered the premises. A short time later,

KL's co-accused allegedly attempted to open the front door. The victim, who had been asleep in her bed, woke up when the trio attempted to enter the house and yelled out to scare them away. The unknown male offender allegedly stole a white pair of shoes from the front stoop before the trio left the premises.

12 At some point between 3.00am and 3.30am, KL, his co-accused and the unknown male offender allegedly attended another residential address in Ormond. The victim, her partner and her 3 children were inside the house at the time.

13 It is alleged that KL, his co-accused and the unknown offender entered the house via an unlocked rear door, located the keys to the victim's white Audi A3 and then stole the vehicle.

14 At approximately 3.32am, the stolen Audi A3 was used in an incident of fuel theft at a service station in Moorabbin. Closed-circuit television footage obtained from the service station allegedly showed KL in the passenger seat of the stolen vehicle and his co-accused in the driver's seat. It is alleged that KL filled up the vehicle with fuel whilst his co-accused remained in the vehicle.

15 At approximately 5.30am, the stolen vehicle was recovered from a carpark near KL's residential address.

B.1.2 Further charge dated 3 August 2024

16 On 3 August 2024, KL was also charged with theft of a motor vehicle contrary to section 74(1) of the *Crimes Act* in relation to a separate incident on 24 July 2024.

17 It is alleged that at 6.47pm on 24 July 2024, KL and 2 co-accused and an unknown male offender stole a Toyota LandCruiser from a leisure centre in Highett. The keys to the vehicle were allegedly stolen from the owner's bag located in the men's changeroom at the leisure centre.

18 It is alleged that the 4 boys drove the stolen vehicle towards Mornington along the Peninsula Link freeway. At approximately 7.16pm, the vehicle was caught on a speed camera in Frankston being driven at a speed of 110 kilometres per hour.

19 At approximately 7.24pm, the vehicle was parked just out of range of a closed-circuit television camera at a shopping centre carpark in Mornington. A shopper's attention was drawn to the vehicle when she heard the engine being revved. She observed a group of 4 young boys in the vehicle. She checked social media for stolen vehicle reports and shortly thereafter made contact with the owner of the vehicle. KL was later identified from closed-circuit television footage obtained from inside the shopping centre as being 1 of the 4 boys involved.

20 On 3 August 2024, a search warrant was executed at KL's residential address. KL was arrested and transported to his local police station for interview. He was subsequently charged and was granted bail by police in relation to the alleged offending on 24 July 2024.

B.1.3 Charges dated 22 August 2024

21 On 22 August 2024, KL was charged with:

(1) Burglary, contrary to section 76(1) of the *Crimes Act*.

(2) Trespass, contrary to section 9(1)(e) of the *Summary Offences Act 1966* (Vic).

(3) Theft of a motor vehicle, contrary to section 74(1) of the *Crimes Act*.

22 It is alleged that at approximately 3.10pm on 5 August 2024, KL and a co-accused attended a sports aquatic centre in Bentleigh East. The pair allegedly walked into the venue and jumped the entry gate, making no attempt to pay for their visit.

23 KL and his co-accused allegedly entered the change rooms and stole a set of car keys before leaving the venue at approximately 3.22pm. They then allegedly ran through the carpark looking for the victim's vehicle. They located the vehicle, unlocked it and drove it out of the carpark.

24 Police later requested closed-circuit television footage from the aquatic centre and identified KL as being 1 of the 2 boys involved in the alleged offending.

25 On 22 August 2024, police attended KL's residential address, arrested and charged him in relation to the motor vehicle theft at the aquatic centre, and later that same day granted him bail.

B.1.4 Charges dated 13 September 2024

26 On 13 September 2024, KL was charged with:

(1) Aggravated burglary, contrary to section 77(1) of the *Crimes Act*.

(2) Burglary, contrary to section 76(1) of the *Crimes Act*.

(3) Five charges of theft, contrary to section 74(1) of the *Crimes Act*.

(4) Obtaining financial advantage by deception, contrary to section 82(1) of the *Crimes Act*.

(5) Theft of a motor vehicle, contrary to section 74(1) of the *Crimes Act*.

(6) Unlicensed driving, contrary to section 18(1) of the *Road Safety Act 1986* (Vic).

(7) False imprisonment, contrary to the common law.

(8) Robbery, contrary to section 75(1) of the *Crimes Act*.

(9) Armed robbery, contrary to section 75A(1) of the *Crimes Act*.

(10) Threats to kill, contrary to section 20 of the *Crimes Act*.

(11) Assault with a weapon, contrary to section 24(2) of the *Summary Offences Act*.

(12) Assault in company, contrary to section 24(2) of the *Summary Offences Act*.

(13) Four charges of handling stolen goods, contrary to section 88(1) of the *Crimes Act*.

(14) Possession of a prohibited weapon, contrary to section 5AA of the *Control of Weapons Act 1990* (Vic).

27 The charges dated 13 September 2024 concern a series of offending which allegedly occurred in late August 2024. Shortly after 5.30pm on 27 August 2024, KL and a co-accused allegedly attended a gym in Noble Park. KL and his co-accused allegedly stole the car keys of another attendee at the gym and left the premises in the victim's Toyota Yaris at approximately 8.10pm.

28 At approximately 8.36pm, KL and his co-accused allegedly attended a service station in Springvale in the stolen vehicle and filled the vehicle with 10.3 litres of fuel without making any attempt to pay for it. KL was allegedly driving the vehicle at the time.

29 A few days later, at approximately 1.12pm on 31 August 2024, KL allegedly attended a service station in Mulgrave in the stolen vehicle. Again, KL filled the vehicle with fuel without making any attempt to pay for it.

30 At approximately 3.00pm at a shopping centre in Mulgrave, KL allegedly approached another boy he knew ("JP").[4] KL allegedly asked JP to check out his new vehicle and harassed JP until he complied.

31 JP allegedly accompanied KL and his co-accused to the rooftop carpark where the stolen Toyota Yaris was parked. After complimenting KL about the vehicle, JP allegedly tried to walk away. KL allegedly stopped JP and threatened him by stating "get in the car or we'll bash you". JP sat in the back seat of the vehicle, KL's co-accused sat in the front passenger seat and KL allegedly drove the stolen vehicle out of the shopping centre shortly thereafter.

32 At approximately 4.48pm, KL allegedly pulled up beside a boy riding his scooter outside a shopping centre in Mulgrave. KL's co-accused allegedly demanded "give us your jumper or we'll bash you". The victim acceded to the co-accused's demands and passed his jumper through the window of the stolen vehicle. JP allegedly

[4]See fn 1 above.

witnessed the robbery from the backseat of the vehicle. The victim's description of KL and his co-accused matched the closed-circuit television footage obtained from outside the shopping centre.

33 After the robbery, JP allegedly asked KL to let him out of the vehicle so that he could catch the bus. KL allegedly refused JP's request.

34 Later that afternoon, KL allegedly picked up 2 other co-accused in the stolen vehicle. After sunset, the group attended a park in the stolen vehicle. KL demanded JP get out of the vehicle. The 4 co-accused allegedly surrounded JP, started filming the incident on their mobile telephones and demanded that JP take off his clothes. JP complied, removing all items of clothing except his t-shirt and underwear. KL allegedly demanded that JP erase and reset his mobile telephone and then allegedly used an extendable baton to strike JP multiple times.

35 The 4 co-accused then allegedly took turns hitting, kicking and stomping on JP which caused him to lose consciousness. They also allegedly sought to humiliate JP by telling him to apologise and kiss their shoes. JP was then driven to an unknown location and was allegedly warned by KL "if you snitch, I will come to your house and kill you" before being beaten once again. Upon his release, JP attended the local police station to report the matter and spent the night in hospital.

36 It is alleged that a total of approximately $2,500 worth of personal belongings were stolen from JP including a hooded jumper, tracksuit pants, runners, an iPhone 14 Pro, an electronic charging pack and $10 in cash.

37 The co-accused allegedly posted videos of the incident on social media which were later obtained by JP and provided to police investigators.

38 On 13 September 2024, a further search warrant was executed at KL's residence. Investigators located and seized various stolen goods in KL's bedroom, including JP's iPhone 14 Pro, stolen bank cards, several sets of car keys and 2 double edged machetes.

39 KL provided police with the passcode to JP's mobile telephone which he had allegedly been using as his own.

40 KL was subsequently arrested and transported to the local police station where he was interviewed in the presence of his mother and later presented to court for a remand hearing. KL was remanded in custody and a "no contact" personal safety intervention order was issued which listed JP as the protected person and KL as the respondent.

41 On 19 September 2024, KL applied for bail in the Children's Court. Bail was granted on the following conditions, namely:

a. Not to contact witnesses.
b. Present during curfew/curfew period 8.00PM and 6.00AM.
c. Exception person – Adult family member or person authorised by [Youth Justice].
d. Reside at [residential address].
e. Not associate with [3 co-accused].
f. Obey directions of Youth Justice.
g. Comply with programme – [Youth Justice] supervised bail.
h. Not to drive a motor vehicle.
i. Not to carry a weapon.

B.2 Breaches of bail conditions

42 It is alleged that KL harassed JP on social media during his most recent grant of bail in breach of the personal safety intervention order currently in place. JP has informed police that he would be concerned for his safety if KL were to be released on bail.

43 In addition, police have identified that KL breached the curfew condition of his grant of bail on numerous occasions between September 2024 and when he was remanded in custody earlier this month. KL's mother also reported him missing several times during that period.

44 Following 1 such report on 12 November 2024, police located KL at a co-accused's residence in breach of the curfew condition of his grant of bail on the morning of 13 November 2024. KL was arrested and, following a hearing in the Children's Court on the same date, his bail was revoked.

B.3 KL's personal circumstances

45 KL is a 13 year old boy born in Australia and of Australian and Cambodian descent. Prior to being remanded in custody, he resided with his mother, father and 3 siblings at their family home in the suburbs of Melbourne.

46 KL is currently subject to a child protection family preservation order. He has no prior criminal history and his current experience on remand represents his longest period of incarceration to date.

47 He has been assessed as a suitable candidate for the Youth Justice supervised bail program and his mother has expressed support for his proposed involvement in the program.

48 In a preliminary assessment report dated 21 November 2024 filed in support of KL's application for bail, a clinical neuropsychologist provided a preliminary assessment that there was "clear, valid, clinical evidence" that *doli incapax* was available to KL.

C. Legal principles

49 Broadly, in interpreting and applying the *Bail Act 1977* (Vic), the court is required to take into account the guiding principles set out in section 1B. These include competing considerations of maximising the safety of the community and the presumption of innocence and the right to liberty.[5]

50 As KL is a child,[6] the *Bail Act* applies to his application for bail, except insofar as it is inconsistent with section 346 of the *Children, Youth and Families Act 2005* (Vic).[7]

[5] *Re Ceylan* [2018] VSC 361, [31]-[32] (Beach JA).
[6] Pursuant to s 3 of the *Bail Act*, "child" has the same meaning as the definition found in the *Children, Youth and Families Act*. In the case of a person who is alleged to have committed an offence, a child is defined as a person who at the time of the alleged commission of the offence was under the age of 18 years, but is of or above the age of 10 years but does not include any person who is of or above the age of 19 years when a proceeding for the offence is commenced in the court: see *Children, Youth and Families Act*, s 3.
[7] *Children, Youth and Families Act*, s 346(6).

51 KL has been charged with committing Schedule 2 offences, namely armed robbery and aggravated burglary,[8] whilst on bail in respect to other Schedule 2 offences.[9] He must, therefore, demonstrate that exceptional circumstances exist to justify the grant of bail.[10]

52 The phrase "exceptional circumstances" is not defined in the *Bail Act*. Numerous authorities have established that, to be exceptional, the circumstances in question must be such as to take the case out of the ordinary or norm so as to justify the grant of bail.[11] Although the threshold is high, it is not an impossible standard to reach. It may be met by a combination of matters, even when none of the individual circumstances is properly considered exceptional.[12]

53 If the court is satisfied that exceptional circumstances exist, the prosecution may nevertheless demonstrate that an applicant presents an unacceptable risk of the kind referred to in section 4E(1) of the *Bail Act*.[13] In assessing whether any risk is an unacceptable risk, the court must consider whether the risk may be mitigated by any conditions of bail.[14]

54 The court must refuse bail if satisfied that there is an unacceptable risk, notwithstanding that the exceptional circumstances test has been met.[15] The notion of unacceptable risk does not concern merely *any* risk of offending. Rather, the question is whether such a risk is unacceptable.[16] The burden of proving that an applicant poses an unacceptable risk rests with the prosecution.[17]

55 In considering both whether exceptional circumstances exist and whether an applicant poses an unacceptable risk, the court must take into account the

[8] *Bail Act*, Sch 2, item 22(a) and (b).
[9] Ibid, Sch 2, items 22(b), 31.
[10] Ibid, ss 4AA(2)(c)(i) and 4A(1).
[11] See, for example, *Re Brown* [2019] VSC 751, [65] (Lasry J), and the cases there cited.
[12] Ibid.
[13] *Bail Act*, s 4D(a).
[14] Ibid, s 4E(3)(b). See also s 5AAA.
[15] Ibid, s 4E(1).
[16] *Hall v Pangemanan* [2018] VSC 533, [25] (Croucher J).
[17] *Bail Act*, s 4E(2).

surrounding circumstances.[18] Such surrounding circumstances include, but are not limited to, the matters listed in section 3AAA(1) of the *Bail Act*, including:

> (aa) whether, if the accused were found guilty of the offence with which the accused is charged, it is likely—
>
> (i) that the accused would be sentenced to a term of imprisonment; and
>
> (ii) if so, that the time the accused would spend remanded in custody if bail is refused would exceed that term of imprisonment;
>
> (a) the nature and seriousness of the alleged offending, including whether it is a serious example of the offence;
>
> (b) the strength of the prosecution case;
>
> (c) the accused's criminal history;
>
> (d) the extent to which the accused has complied with the conditions of any earlier grant of bail;
>
> (e) whether, at the time of the alleged offending, the accused—
>
> (i) was on bail for another offence; or
>
> …
>
> …
>
> (g) the accused's personal circumstances, associations, home environment and background;
>
> (h) any special vulnerability of the accused, including—
>
> …
>
> (ii) being a child; or
>
> …
>
> (i) the availability of treatment or bail support services;
>
> (j) any known view or likely view of an alleged victim of the offending on the grant of bail, the amount of bail or the conditions of bail;
>
> (k) the length of time the accused is likely to spend in custody if bail is refused;
>
> (l) the likely sentence to be imposed should the accused be found guilty of the offence with which the accused is charged;
>
> …

[18]Ibid, ss 4A(3) and 4E(3)(a).

56 If the court is considering the release of an applicant on bail, it must impose any condition that, in the opinion of the court, will reduce the likelihood of the risk that the applicant may endanger the safety or welfare of any person, whether by committing an offence that has that effect or by any other means, interfere with a witness or otherwise obstruct the course of justice, or fail to surrender into custody in accordance with the bail undertaking.[19] However, those conditions must be no more onerous than is required to reduce the likelihood of the risk in question, and must be reasonable, having regard to the nature of the alleged offending and the circumstances of the applicant.[20]

57 When making a determination in relation to a child, the court is also required to have regard to the matters listed in section 3B(1) of the *Bail Act*, namely:

> …
>
> (a) the child's age, maturity and stage of development at the time of the alleged offence;
>
> (b) the need to impose on the child the minimum intervention required in the circumstances, with the remand of the child being a last resort;
>
> (c) the presumption at common law that a child who is 10 years of age or over but under 14 years of age cannot commit an offence;
>
> (d) the need to preserve and strengthen the child's relationships with—
>
> (i) the child's parents, guardian and carers; and
>
> (ii) other significant persons in the child's life;
>
> (e) the importance of supporting the child to live at home or in safe, stable and secure living arrangements in the community;
>
> (f) the importance—
>
> (i) of supporting the child to engage in education, or in training or work; and
>
> (ii) of that engagement being subject only to minimal interruption or disturbance;
>
> (g) the need to minimise the stigma to the child resulting from being remanded;

[19] Ibid, s 5AAA(1).
[20] Ibid, s 5AAA(2).

(h) the fact that time in custody has been shown to pose criminogenic and other risks for children, including—

(i) a risk that the child will become further involved in the criminal justice system; and

(ii) a risk of harm;

(i) the need to ensure that the conditions of bail—

(i) are no more onerous than is necessary; and

(ii) do not constitute unfair management of the child;

(j) the fact that some cohorts of children, including the following cohorts, experience discrimination resulting in that cohort's overrepresentation in the criminal justice system—

…

(ii) children involved in the child protection system;

(iii) children from culturally and linguistically diverse backgrounds;

(k) whether, if the child were found guilty of the offence charged, it is likely—

(i) that the child would be sentenced to a term of imprisonment; and

(ii) if so, that the time the child would spend remanded in custody if bail is refused would exceed that term of imprisonment;

(l) any of the following issues that arise—

…

(iii) the impact on the child, and on the child's behaviour, of any experience of abuse, trauma, neglect, loss, family violence or child protection involvement, including removal from family or placement in out of home care;

(m) any other relevant factor or characteristic.

58 The significance of section 3B(1) is evident from the fact that it is a standalone provision, as opposed to being incorporated into the broader list of surrounding circumstances under section 3AAA(1).[21] Its significance is also confirmed by the fact that, following the recent reforms to the *Bail Act*, the considerations in section 3B(1) were expanded to ensure the provision properly accounts for the special needs and

[21]Separate and in addition to the surrounding circumstance of special vulnerability of an accused due to being a child: *Bail Act*, s 3AAA(1)(h)(ii).

vulnerabilities of children, and the detrimental impact of remand on children.[22] Notably, subsections (b) to (j) must be taken into account whether or not any evidence or information in respect of these issues is put before the court.[23]

59 The authorities indicate that an applicant's status as a child will weigh heavily in favour of establishing exceptional circumstances, as children applying for bail are afforded a special status.[24] That said, this does not mean that the guiding principles under section 1B, including maximising community safety, do not apply in cases concerning children.[25]

60 In making a determination in relation to a child, the court may also take into account any recommendation or information contained in a report provided by a bail support service.[26] Further, if bail is refused, the court must remand the child in custody to appear before a court at a later date which must not be for a period longer than 21 clear days.[27]

D. Submissions

D.1 KL's submissions

61 In support of KL's application for bail, the following factors were relied upon, either individually or in combination, to establish exceptional circumstances justifying the grant of bail:

(1) KL's special status under the law as a child.[28]

[22]Victoria, *Parliamentary Debates*, Legislative Assembly, 16 August 2023, 2899.8 (Anthony Carbines).
[23]*Bail Act*, s 3B(1B).
[24]*Re JO* [2018] VSC 438, [14] (T Forrest J). In relation to children seeking bail on the basis of exceptional circumstances, see also: *FT v The King* [2024] VSCA 90 (Beach, McLeish and Niall JJA); *Re PJ* [2024] VSC 97 (Incerti J); *Re GA* [2022] VSC 148 (Fox J); *Re AM* [2020] VSC 569 (Tinney J); *Re TP* [2018] VSC 748 (Champion J).
[25]*Re AM* [2020] VSC 569, [66] (Tinney J).
[26]*Bail Act*, s 3B(2).
[27] Ibid, s 12(4)(a).
[28]Particular reference was made to ss 3AAA and 3B of the *Bail Act*.

(2) The presumption of *doli incapax* enshrined in section 3B(1)(c) of the *Bail Act*.

(3) KL's particular vulnerability as a child, including as a child from a culturally and linguistically diverse background and as a child involved in the child protection system.

(4) The likelihood that the time KL spends on remand will exceed any sentence imposed (if he is not acquitted of all charges).[29]

(5) The availability of stable accommodation and family support.

(6) The availability of support from Youth Justice.

(7) The availability of education.

(8) The lack of further charges since KL was granted bail on 19 September 2024.

62 In light of the concessions made by the prosecution, it is not necessary to detail the submissions made on KL's behalf regarding unacceptable risk.

D.2 Prosecution's submissions

63 The prosecution properly conceded that it was open for the court to find that exceptional circumstances exist that justify the grant of bail. In this regard, reference was made to KL's age, the presumption of *doli incapax*, the availability of support from Youth Justice, as well as KL's lack of criminal history.

64 As the submission that KL posed an unacceptable risk of the kind referred to in section 4E of the *Bail Act* was not pressed, the prosecution's oral submissions were brief and largely concerned the proposed conditions of bail.

65 The prosecution proposed the following conditions:

a. To reside at [his family home].

[29]In this regard, reference was made to *HA v The Queen* [2021] VSCA 64, [64] (Maxwell P and Kaye JA).

b. To comply with a curfew condition between 7pm and 7am, except in the company of a parent or nominee of Youth Justice.

c. To present at the front door upon request of members of Victoria Police.

d. Not to contact the victim directly or indirectly.

e. Not to associate or contact directly or indirectly with any co-accused namely [7 co-accused].

f. To comply with the requirements of the Youth Justice bail program.

g. To attend [school] on [days/hours].

h. Not to drive a motor vehicle.

i. Not to be present in any stolen vehicle.

j. Abstain from the consumption of any alcohol or drug of dependence within the meaning of the *Drugs, Poisons and Controlled Substances Act 1981* (Vic), without lawful authorisation under that Act.

k. To comply with the conditions of the personal safety intervention order issued by [the Children's Court] on 12 September 2024, [case number].

l. Not to attend the City of Kingston and the City of Glen Eira unless in the company of a parent or nominee of Youth Justice. The City of Kingston comprises the following suburbs: Aspendale Gardens, Aspendale, Bonbeach, Braeside, Carrum, Chelsea Heights, Chelsea, Cheltenham, Clarinda, Clayton South, Dingley Village, Edithvale, Heatherton, Highett, Mentone, Moorabbin, Mordialloc, Oakleigh South, Parkdale, Patterson Lakes, Waterways. The City of Glen Eira comprises the following suburbs: Bentleigh East, Bentleigh, Brighton East, Carnegie, Caulfield East, Caulfield North, Caulfield South, Caulfield, Elsternwick, Gardenvale, Glen Huntly, McKinnon, Murrumbeena, Ormond, St Kilda East.

E. Consideration

66 There can be no question that exceptional circumstances exist that justify the grant of bail, having regard to KL's age, the supports available to him and his lack of criminal history.

67 Leaving aside matters relating to *doli incapax*, the prosecution case in relation to the more serious charges could only be described as strong. The seriousness of some of the charges is difficult to overstate. However, KL is only a child and must be given every reasonable opportunity, consistent with the *Bail Act*, to find his place in our society in an manner that is satisfactory for both him and the community at large.

68 As for unacceptable risk, the question is far more difficult. Members of our community are entitled to feel that the authorities, including the courts, are here to protect them from invasive and violent crimes the effect of which go to the very fabric of the type of society we live in. KL's current situation means that the risk he obviously poses could only be considered as being acceptable with the imposition of very strict conditions of bail.

69 It is clear that the parties to this application have appreciated this and have worked diligently together to include conditions of bail directed specifically at seeking to assist KL and also reduce the real risk that KL would pose if bail were granted. The court acknowledges the importance of this constructive approach. However, there have also been attempts in the past to formulate appropriate conditions of bail which have not resulted in KL acting appropriately or satisfactorily directing his efforts towards rehabilitation and an acceptable course of conduct.

70 In circumstances where it would appear that previously KL has not fully accepted the seriousness of his situation, I am not willing to grant bail without ongoing court supervision. Accordingly, bail will only be granted for a week.

71 The matter will be listed for hearing at 9.30am next Friday, 29 November 2024, so that the court may be informed of KL's compliance with the conditions of bail and any other matters relevant to the question of whether it is appropriate for bail to be granted for a lengthier period of time. As was explained to KL during the course of today's hearing,[30] the court will treat any breach of bail conditions in the ensuing week with the utmost seriousness.

F. Conclusion

72 For the reasons stated, I am satisfied that exceptional circumstances exist that justify the grant of bail and that the prosecution has not established that KL poses an unacceptable risk in the immediate future of the kind referred to in section 4E of the

[30]By reference to *FT v The King* [2024] VSCA 90 (Beach, McLeish and Niall JJA).

Bail Act. Accordingly, bail is granted for a period of 1 week on the following conditions, namely that he must:

(1) Reside at [residential address] ("the Residence").

(2) Remain at the Residence between the hours of 7.00pm and 7.00am each day ("the Curfew Hours"), unless in the company of a parent or nominee of Youth Justice.

(3) Present himself at the front door of the Residence during the Curfew Hours if and when called upon by a member of Victoria Police to do so.

(4) Not contact, directly or indirectly, any witness for the prosecution other than the informants.

(5) Not associate with or contact, directly or indirectly, any co-accused, namely [10 co-accused].

(6) Comply with the Youth Justice supervised bail plan annexed to the Youth Justice bail service report dated 20 November 2024, commencing page 8 of 14.

(7) Comply with all lawful directions of Youth Justice.

(8) Subject to the directions of Youth Justice, attend [school] in accordance with the Youth Justice supervised bail plan annexed to the Youth Justice bail service report dated 20 November 2024, commencing page 8 of 14, on the following dates:

(a) Monday, 25 November 2024 from 9.30am until 1.00pm;

(b) Tuesday, 26 November 2024 from 9.30am until 1.00pm; and

(c) Thursday, 28 November 2024 from 9.30am until 1.00pm.

(9) Not drive a motor vehicle.

(10) Not be present in any stolen vehicle.

(11) Abstain from consuming any alcohol or drug of dependence within the meaning of the *Drugs, Poisons and Controlled Substances Act 1981* (Vic), without lawful authorisation under that Act.

(12) Comply with the conditions of the personal safety intervention order [case number] issued by the Children's Court of Victoria at [location] on 12 September 2024.

(13) Not attend the City of Kingston and the City of Glen Eira unless in the company of a parent or nominee of Youth Justice. The City of Kingston comprises the following suburbs: Aspendale Gardens, Aspendale, Bonbeach, Braeside, Carrum, Chelsea Heights, Chelsea, Cheltenham, Clarinda, Clayton South, Dingley Village, Edithvale, Heatherton, Highett, Mentone, Moorabbin, Mordialloc, Oakleigh South, Parkdale, Patterson Lakes and Waterways. The City of Glen Eira comprises the following suburbs: Bentleigh East, Bentleigh, Brighton East, Carnegie, Caulfield East, Caulfield North, Caulfield South, Caulfield, Elsternwick, Gardenvale, Glen Huntly, McKinnon, Murrumbeena, Ormond and St Kilda East.

(14) Not leave the State of Victoria.

(15) Attend the Supreme Court of Victoria at Melbourne at 9.30am on Friday, 29 November 2024, and there surrender himself, and not depart without leave of the court, and if leave is given, return at the time specified by the court and again surrender himself into custody.